

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 21-0462V

DANA IORIO *as special administrator*
of ESTATE OF DEANN BABER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: August 8, 2023

Rhonda Lorenz-Pignato, Shannon Law Group, P.C., Woodridge, IL, for Petitioner.

Voris Edward Johnson, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 11, 2021, Deann Baber filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). On November 4, 2022, following Ms. Baber’s death, Dana Iorio, special administrator of Ms. Baber’s estate, was substituted (ECF No. 26). On December 12, 2022, an amended petition was filed (ECF No. 27). Petitioner alleges that Ms. Baber suffered a shoulder injury related to vaccine administration (“SIRVA”) resulting from an influenza vaccine Ms. Baber received on September 17, 2020. Amended Petition at 1. Petitioner further alleges that the vaccine was administered in the United States, Ms. Baber’s pain and impairment continued for longer than six months, and neither Ms. Baber, nor any other party, has ever filed an action or received compensation in the form of an

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims’ website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

award or settlement for Ms. Baber's vaccine-related injury. Amended Petition at ¶¶ 3, 33, 36-37. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On June 5, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On August 8, 2023, Respondent filed a proffer on award of compensation ("Proffer") indicating Petitioner should be awarded a lump sum of \$57,500.00, as well as \$1,956.06 to satisfy a State of California Medicaid lien. Proffer at 1-2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner the following:**

- **A lump sum payment of \$57,500.00 (for pain and suffering) in the form of a check payable to Petitioner, Dana Iorio, as special administrator of the estate of Deann Baber; and**
- **A lump sum of \$1,956.06, to satisfy a State of California Medicaid lien, in the form of a check made payable jointly to Petitioner and**

**Department of Health Care Services
Recovery Branch – MS 4720
P.O. Box 997421
Sacramento, CA 95899-7421
Ref.: Acct. No. C99294075C-VAC**

Petitioner agrees to endorse this check over to the California Department of Health Care Services.

The above amounts represent compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

On June 5, 2023, the Court issued a Ruling on Entitlement finding petitioner Dana Iorio, as special administrator of the estate of Deann Baber, entitled to Vaccine Act compensation in this matter alleging a Shoulder Injury Related to Vaccine Administration following an influenza vaccination. Respondent, the Secretary of Health and Human Services, now proffers that petitioner receive a compensation award consisting of:

- a. a lump sum of **\$57,500.00** for pain and suffering, in the form of a check payable to petitioner, Dana Iorio, as special administrator of the estate of Deann Baber;¹ and,
- b. a lump sum of **\$1,956.06**² to satisfy a State of California Medicaid lien, in

¹ Petitioner is a competent adult. No guardianship is required.

² This amount represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of California may have against any individual as a result of any Medicaid payments the California Department of Health Care Services has made to or on behalf of Deann Baber as a result of her alleged vaccine-related injury suffered on or around September 17, 2020, under Title XIX of the Social Security Act, see 42 U.S.C. § 300aa-15(g), (h).

the form of a check made payable jointly to petitioner and:

Department of Health Care Services
Recovery Branch - MS 4720
P.O. Box 997421
Sacramento, CA 95899-7421
Ref.: Acct. No. C99294075C-VAC

Petitioner agrees to endorse this check over to the California Department of Health Care Services.

The above amounts represent compensation for all elements of compensation provided by 42 U.S.C. § 300aa-15(a) to which petitioner is entitled.³

Petitioner agrees with the proffered award of \$57,500.00, plus \$1,956.06 to satisfy the Medicaid lien.⁴

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D’ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

ALEXIS B. BABCOCK
Assistant Director
Torts Branch, Civil Division

³ Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.

⁴ This proffer does not include any award for attorneys’ fees and costs that may be awarded pursuant to 42 U.S.C. § 300aa-15(e).

s/Voris E. Johnson, Jr.
VORIS E. JOHNSON, JR.
Senior Trial Attorney
Torts Branch, Civil Division
U. S. Department of Justice
P.O. Box 146, Benjamin Franklin Station
Washington, D.C. 20044-0146
Direct Dial: 202-616-3667
Email: Voris.Johnson@usdoj.gov

Date: August 8, 2023